

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36171

STATE OF IDAHO,)	2010 Unpublished Opinion No. 421
)	
Plaintiff-Respondent,)	Filed: April 8, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
MARK W. CUTLER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Blaine County. Hon. Robert J. Elgee, District Judge.

Order denying motion to withdraw guilty plea, affirmed.

Mark W. Cutler, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Mark W. Cutler appeals pro se from the district court's denial of his Idaho Criminal Rule 33(c) motion to withdraw his guilty plea. We affirm.

I.

BACKGROUND

In 2000, a judgment of conviction and sentence were entered upon Cutler's guilty plea to driving under the influence (DUI). Cutler appealed and this Court affirmed Cutler's judgment of conviction and sentence on August 23, 2001. A remittitur was issued on September 14, 2001. Cutler was permitted to file a late petition for review to the Idaho Supreme Court on October 24, 2001, and the previously issued remittitur was withdrawn the same day. Subsequently, our Supreme Court denied Cutler's petition for review and a new remittitur was issued on December 18, 2001.

Cutler filed an Idaho Criminal Rule 33(c) motion to withdraw his 2000 DUI guilty plea on September 4, 2008. After reaching the merits of Cutler's motion, the district court denied it.

Cutler then filed a motion to reconsider and a motion for leave to file an amended I.C.R. 33(c) motion, both of which were denied. Cutler timely appeals these denials. Cutler argues on appeal that he should be allowed to withdraw his guilty plea because of multiple constitutional violations that allegedly occurred in conjunction with his arrest and conviction.

II.

ANALYSIS

Unlike the district court, we do not reach the substance of Cutler's arguments because we conclude that the district court lacked subject matter jurisdiction to entertain Cutler's motion to withdraw his guilty plea.

Whether a court has jurisdiction is a question of law, over which we exercise free review. *State Kavajecz*, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003); *State v. Savage*, 145 Idaho 756, 758, 185 P.3d 268, 270 (Ct. App. 2008). Motions to withdraw guilty pleas are authorized by I.C.R. 33(c). Once a judgment becomes final, however, a trial court does not have jurisdiction to amend or set aside the judgment absent a statute or a rule extending jurisdiction. *State v. Rogers*, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004); *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003); *State v. Armstrong*, 146 Idaho 372, 377-78, 195 P.3d 731, 736-37 (Ct. App. 2008). A judgment becomes final at the expiration of time for appeal or affirmance of the judgment on appeal, and a motion to withdraw a guilty plea may not be granted thereafter. *Jakoski*, 139 Idaho at 355, 79 P.3d at 714; *Armstrong*, 146 Idaho at 377-78, 195 P.3d at 736-37.

The trial court here lacked subject matter jurisdiction to entertain Cutler's motion to withdraw his guilty plea because the judgment of conviction had become final upon this Court's issuance of a remittitur on December 18, 2001, almost seven years before Cutler filed his motion. We therefore must affirm the denial order, albeit on a ground different from that upon which the district court relied.

The district court's order denying Cutler's motion to withdraw the guilty plea is affirmed.

Judge GUTIERREZ and Judge GRATTON CONCUR.